IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEALS NO. 134 AND 135 OF 2005.

SECOND APPEAL NO. 134/2005

Shri Anand Lingappa Mugodi
and 2 Ors. .... Appellants.

Versus

Smt. Pramita Pandurang Arolkar,
Bicholim, Goa. ... Respondent.

SECOND APPEAL NO. 135/2005.

Shri Anand Lingappa Murgodi;
Bicholim, Goa. .... Appellant.

Versus

Shri Suresh Kalangutkar,
Chodna, Tiswadi, Goa. .... Respondent.

Shri D.J. Pangam, Advocate for the Appellants.

CORAM: R.M.S. KHANDEPARKAR, J.

DATE: 16th JANUARY, 2006.

P.C.:

Heard.

2. Since common questions of law and facts arise in both the Second Appeals, they are being disposed of by a common order.

3. Both the Courts below have arrived at concurrent finding on the point

of possession of the suit structure with the respondents. The finding has been arrived at on detail analysis of the evidence on record as well as on documentary evidence. The finding essentially being a finding of fact and having been arrived at on proper analysis of the evidence on record, does not warrant interference in exercise of the powers under Section 100 of C.P.C. It was sought to be argued on behalf of the appellants that the respondents had approached the Court with the plea that they are lessees in relation of the suit premises. However, the issues framed by the Trial Court were at no point of time disputed by the appellants nor there was challenge to the same. At no point of time it was disclosed that there was any issue required to be framed regarding occupation of the suit premises by the respondents as being the lessee thereof. Attention was also sought to be drawn to para 15 of the trial Court judgment wherein it was observed that the case of the respondents to be that of lessees in relation to the suit structure. However, the issues which were framed by the Trial Court for consideration read thus:-

> " 1. Whether the plaintiff proves that the workshop was erected by late husband of the plaintiff on the land belonging to late Mendes, surveyed under no: 82/7, of Village Bordem ?
>
> 2. Whether the plaintiff proves that the suit workshop and the suit rooms were occupied by and were in possession of her late husband and are at present in possession of the plaintiff ? "

4. It is not the case of the appellants that the appellants at any point of time either before the trial Court requested for re-framing of the issues or challenged the approach of the trial Court in not considering the plea of leasehold right of the respondents in relation to the suit structure. It is too late for the appellants to raise the said issue in second appeal, more particularly when both the Courts below have arrived at concurrent finding about the settled possession of the suit premises with the respondents and the relief which has been granted against the appellants is only to restrain them from evicting the respondents otherwise than in due course of law.

5. Besides, mere claim of being lessee is not sufficient to frame the issue of tenancy. The party claiming the right of tenancy has to plead necessary facts which can disclose his status as that of lessee. Undisputedly, the pleadings did not disclose any such facts.

6. In the circumstances, therefore, no substantial question of law arises for consideration in these appeals and hence both the appeals are rejected.

R.M.S. KHANDEPARKAR, J.

sl.